HIGH COURT OF UTARANCHAL AT NAINITAL

Civil Revision No. 44 of 2004

Bablu Alias Budh Ram
And others. .....Revisionists

Vs

Gainden Lal and two others. .....Respondents

Counsel for the Petitioner Sh. Jagdish Prasad
And Sh. Gopal Narain.
Standing counsel for the respondents.

Dated:- 27-7-2004

Hon'ble Rajesh Tandon J.

Heard Sh. Jagdish Prasad and Sh. Gopal Narain learned counsel for the revisionist and learned standing counsel for the respondents.

By the present revision the revisionists have prayed for their impleadment under Order 1 Rule 10 of the Code of Civil Procedure.

Brief facts giving rise to the present revision are that the suit was filed by the respondent No. 1 praying for the permanent injunction, restraining the respondents, State of Uttaranchal from interfering in the possession of the plaintiff of the property in suit.

The plaint shows that the plaintiff respondents have alleged themselves to be in possession.

The present application has been filed on behalf of the applicant revisionists for impleadment on the ground that they are continuing in possession is respect of Kharas No. 35/2/1, Area 0-300 and all the applicants are in possession. The aforesaid application has rejected without taking into

consideration, that there is a specific case of applicants that they are in possession of the relevant Kharas against which the injunction has been sought.

The commissioner has also not specifically stated as to who is in possession. On the other hand it has come on the record that wheat crop is standing on plot no.35.

Counsel for the applicants have referred the Judgment of Anil Kumar Singh Vs. Shivnath Mishra 1995 (3) SCC 147, where the apex court has observed that the criteria of impleading the party is to determine as to whether the complete final result involved in the suit, can be made or not. The observations of the Apex Court are quoted below:-

> *" A person may be added as a party-defendant to the suit though no relief may be claimed against him/her provided his/her presence is necessary for a complete and final decision on the question involved in the suit. Such a person is only a proper party as distinguished from a necessary party."*

In view of the aforesaid fact, the learned Additional Civil Judge (J.D) is directed to consider the application of the applicants on merits after conducting survey. If the court comes to the conclusion that the applicants are in possession, they will be necessary party or at least a proper party for adjudication of the case.

In view of the observations made above the learned Additional Civil Judge (J.D) will take steps to get the survey in order to ascertain as to whether the impleadment is necessary or not.

The applicants shall file an application before the Civil Judge (J.D) for establishing that they are in possession. However, the order dt. 21-7-2004 shall not come in the way of the applicants while deciding the application as directed above.

Subject to the aforesaid observation, revision is disposed of. No order as to costs.

(RAJESH TANDON J.)

27-7-2004

M.K.